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*Criminological Highlights* is produced approximately six times a year by the Centre of Criminology, University of Toronto and is designed to provide an accessible look at some of the more interesting criminological research that is being published.

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- The first three pages contain "headline" that summarizes the important points of the article. This is followed by a single paragraph "conclusion" on what one might learn from the paper. **We suggest that the busy user of this service should begin by reading the headlines** and any of the "conclusions" that seem interesting.
- Next comes an 8-page section -- the core of this document -- where we have provided one-page summaries of each paper.

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This issue of *Criminological Highlights* was prepared by Anthony Doob, Tom Finlay, Carla Cesaroni, Myrna Dawson, Rosemary Gartner, Voula Marinos, Andrea Shier, Greg Smith, Jane Spratt, Cheryl Webster, Kimberly Varma and Jennifer Wood.

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**Can crime be reduced effectively by identifying offenders likely to re-offend and incarcerating them? The answer is simple: No.**

“Proposals for selective incapacitation are predicated on the idea that we can prospectively identify high-rate offenders sufficiently early in their careers to reap the incapacitative benefit of crime reduction. The major obstacle to the successful implementation of such proposals is that no convincing evidence exists that this is possible” (p. 726). There is a “tremendous appeal of selective incapacitation as an idea. Given that we have every reason to believe that a small subset of criminal offenders contribute disproportionately to the total volume of crime in a society, a strategy that promises to locate and incapacitate this group is almost irresistible in its elegance. The seductive simplicity of selective incapacitation leads otherwise conscientious researchers to conclude that it works, despite the total lack of evidence to support such a conclusion.... The obstacle to realizing this seemingly perfect solution to crime prevention lies in the prospective identification of this offender pool. We simply cannot do it with any reliable accuracy” (p. 727). [The criminologist Frank Zimring once remarked, “The wonderful thing about incapacitation as a method of crime control is that it has no moving parts.”] As another writer noted, “the criminal justice system has been burdened with unrealistic expectations of solving social problems that have [proven to be] insoluble elsewhere” (p. 728). (Item 1)

**A study of inmate riots and disturbances in over 300 adult maximum and medium security (U.S.) state prisons suggests that “collective violence is a product of unstable, divided, or otherwise weak management” in prisons.**

“Prisons that achieve a high level of *esprit de corps* among officers, that successfully combat the development of prohibited inmate groups (e.g., street gangs and racial hatred groups), and that maintain a high level of officer competence and a low level of agitation between officers and inmates are less likely to experience unlawful, collective inmate protests than similar prisons that do not meet these managerial challenges” (p. 753). (Item 2)

**Black residents of both the U.S. and Canada are more likely than white residents to perceive that the criminal justice system is biased on racial grounds. In Canada, contact with the police or the courts increases the perception of bias for black residents.**

These findings -- that blacks are much more likely than whites to perceive racial bias on the part of the police and courts -- are important for a number of reasons including the fact that “people obey the law [in part] because they believe that it is proper to do so... People are more responsive to normative judgements and appeals than is typically recognized by criminal legal authorities...” (p. 461). Given that most people believe that it is the responsibility of the police and others in the criminal justice system to maintain confidence in the system, these perceptions of injustice cannot be ignored. They are also important because they are one more indicator of differential treatment of blacks by the police and other parts of the justice system. (Item 3)

**Victims want to be recognized as participants in the criminal justice process. Police can improve victim satisfaction and support for themselves by keeping victims apprised of developments in “their” case.**

One humane way of treating victims that also enhances victims’ assessment of the criminal justice process is to keep victims informed about what is happening with their cases. When this is done by the police, the victims not only see the police in a more favourable light, but also see various aspects of the criminal justice system -- particularly sentencing – more positively.

**(Item 4)**

**Street gangs are not a new phenomenon in Canadian cities. A typology of gangs which divides them into three groups -- criminal organizations, street gangs, and wanna-be groups -- is important because the motivation to be involved in each of these three types of organizations is different. The most appropriate interventions vary with the type of group.**

Membership in the various types of “gangs” appeared to be driven by different factors. As a result, interventions attempting to reduce gang activities, then, should focus on the particular needs of potential gang members. “Anti-gang programming appears to be most effective when it is aimed at the supply of new gang and group members, rather than existing and well-established street gang members.” As in other areas, a focus on prevention is likely to be the most effective approach. **(Item 5)**

**Low birth weight, combined with low socioeconomic status, places children at risk for early onset (life-course-persistent) offending.**

For boys, it would appear that being disadvantaged at birth *and* during childhood combine to create a risk of early onset, life-course persistent anti-social behaviour. Hence, the adverse impact of low birth weight could be reduced or eliminated through social means: “Supportive environments and early interventions stand a fighting chance at diminishing the consequences of birth-related difficulties, and such approaches may have an even more demonstrable impact on inner-city youths” (p.869). **(Item 6)**

**Being abused or neglected in childhood increases both the likelihood that a child will run away from home and the likelihood that a child will become delinquent. However, running away (even for a child who is from a non-abusive home and who is not neglected) independently increases the likelihood of being involved in delinquency.**

Since being abused or neglected and running away appear to each have an independent impact on future delinquency (and being abused/neglected also increases the likelihood of running away), it would appear that, in terms of preventing delinquency, one could focus on either or both of these problems. A focus on reducing abuse and neglect is obviously important for three reasons: it may help reduce the incidence of that problem, it may reduce running away, and it can reduce delinquency. However, these data also suggest that we need to focus attention on what it is “about the runaway experience that increases a youth’s risk for juvenile arrest....” (p. 367). “Running away may represent a critical point for intervention, particularly if we view the runaway behaviour as a marker for subsequent high risk outcomes... Runaway behaviour may provide us with an important opportunity to intervene positively in the lives of these youth, particularly for very young runaways and for abused and neglected children who may have the highest risk of involvement with the juvenile justice system” (p. 368). One suspects, however, that Ontario’s “Safe Streets” Act, which, in effect, criminalizes the behaviour of runaways, would not qualify as a positive intervention. **(Item 7)**

**Everyday knowledge -- and everyday misunderstandings of the law -- can affect the way in which decisions are made. Jurors in capital cases in the state of Georgia often have strong, and largely incorrect, views of the likelihood of release of an offender given “life” instead of the death penalty. The legal fiction that the consequences of a decision are not relevant to the jury members is clearly not followed: Death is recommended by juries in part because they do not know what the meaning is of a sentence of life in prison.**

When people are making decisions, the consequences of those decisions are taken into account. When those consequences are misperceived, it is the misperception that will affect the decision. Courts have repeatedly been reluctant to allow “ordinary jurors” to take into account the consequences of their decisions. Thus, for example, when deciding between two possible charges, decision makers may well take into account expectations based on “folk wisdom” rather than facts when crafting a decision that is designed to accomplish a particular goal. **(Item 8)**

**Can crime be reduced effectively by identifying offenders likely to re-offend and incarcerating them? The answer is simple: No.**

*Background.* The “new penology” represents a shift from the treatment of offenders to “the efficient management of dangerous groups. The [penal] task is managerial, not transformative” (p.704). The terms “protection of society” or “protection of the public” now appear to mean “making it impossible for people to offend by placing them in prison.” This is one of the justifications used for “three strikes” legislation. There are, however, serious problems with incapacitation models of sentencing, including the following:

- “the frequency of offending declines with age...
- there is no evidence of a progression of increasing severity of the offences committed over the length of a criminal career,
- there is little evidence of specialization on the part of high rate criminals” (p.707-8).

But the most serious problem is that even the most careful (and optimistic) selective incapacitation model (Greenwood and Abrahamse’s 1982 Rand Corporation report) shows high rates of false positives (around 50%). Furthermore, in the construction of its sentencing model, the Greenwood and Abrahamse study used “items that are unrelated to either the offence or the blameworthiness of the offender” (such as employment history, juvenile and adult drug use, and juvenile criminal history, p.719-720).

*The study* described in this article replicated the Greenwood (Rand) study. The results of this “new and improved” study are simple to summarize: Using California prison data, only 36% of those who were predicted to be high rate offenders actually turn out to be high rate offenders. Moreover, about one third of the high rate offenders were not identified as such.

*Conclusion.* “Proposals for selective incapacitation are predicated on the idea that we can prospectively identify high-rate offenders sufficiently early in their careers to reap the incapacitative benefit of crime reduction. The major obstacle to the successful implementation of such proposals is that no convincing evidence exists that this is possible” (p. 726). There is a “tremendous appeal of selective incapacitation as an idea. Given that we have every reason to believe that a small subset of criminal offenders contribute disproportionately to the total volume of crime in a society, a strategy that promises to locate and incapacitate this group is almost irresistible in its elegance. The seductive simplicity of selective incapacitation leads otherwise conscientious researchers to conclude that it works, despite the total lack of evidence to support such a conclusion.... The obstacle to realizing this seemingly perfect solution to crime prevention lies in the prospective identification of this offender pool. We simply cannot do it with any reliable accuracy” (p. 727). [The criminologist Frank Zimring once remarked, “The wonderful thing about incapacitation as a method of crime control is that it has no moving parts.”] As another writer noted, “the criminal justice system has been burdened with unrealistic expectations of solving social problems that have [proven to be] insoluble elsewhere” (p. 728).

*Reference.* Auerhahn, Kathleen. Selective incapacitation and the problem of prediction. *Criminology*, 1999, 37 (4), 703-734.

**A study of inmate riots and disturbances in over 300 adult maximum and medium security (U.S.) state prisons suggests that “collective violence is a product of unstable, divided, or otherwise weak management” in prisons.**

*Background.* There have been two popular explanations for collective disorders (riots, disturbances, and protests) in prison:

- Inmate balance theory suggests that disturbances occur when prison officials go too far in asserting their authority.
- Administrative-control theory suggests that prison disorder occurs as a result of weak management or “administrative breakdown.” In this case, routine security measures become impossible to carry out.

Inmate balance theory suggests that riots, etc., take place “when prison officials take abrupt action to reassert control. In contrast, administrative-control theory posits that inmate collective action is the product of ineffective authority.” Much of the research that has been carried out consists of case studies or enquiries into prison disturbances.

*This study* collected data from wardens or superintendents of 317 prisons. Wardens were asked whether their institution had experienced a riot, disturbance or non-violent protest. Administrative control was assessed through such things as how well the prison administration and the front line officers worked together. Wardens were also asked whether there were “prohibited groups” operating in the prisons. This was used as a measure of the breakdown of administrative control. In addition, they were asked whether any policy crackdowns (e.g., on inmate movement, work assignments, etc.) had occurred. These were measures related to “inmate balance theory.”

*The findings* tend to support “administrative-control” theory, though not all of the indicators of administrative control predicted inmate disturbances. However, “if administrative sanctions are used ineffectively and prohibited groups are allowed to proliferate, the likelihood of a serious collective act by inmates significantly increases” (p. 752).

*Conclusion.* “Prisons that achieve a high level of *esprit de corps* among officers, that successfully combat the development of prohibited inmate groups (e.g., street gangs and racial hatred groups), and that maintain a high level of officer competence and a low level of agitation between officers and inmates are less likely to experience unlawful, collective inmate protests than similar prisons that do not meet these managerial challenges” (p. 753).

*Reference.* Useem, Bert and Michael D. Reisig. Collective action in prisons: Protests, disturbances, and riots. *Criminology*, 1999, 37(4), 735-759.

**Black residents of both the U.S. and Canada are more likely than white residents to perceive that the criminal justice system is biased on racial grounds. In Canada, contact with the police or the courts increases the perception of bias for black residents.**

*Background.* It has been suggested that social class has become more important than race in determining perceptions of criminal justice agencies. Some have suggested, for example, that it is class, not race, that determines the targets of “police misconduct” and the perception that the system is biased. These two studies suggest otherwise.

*These studies,* one carried out in Canada, the other in the U.S., both look at the role of race (and educational achievement) on respondents’ views of discrimination by the police. The American study examined opinions regarding the role of the police in providing security in neighbourhoods, confidence that the police treat people of both races equally, unfair treatment by the police, and the perception of how widespread the problem of racism against blacks is among police officers.

The Canadian study looked at the perception that certain groups are treated worse (e.g., the poor, the young, blacks) by the police and the courts. Generally speaking, Canadian respondents perceive more discrimination by the police than by criminal court judges. In addition, “black respondents are much more likely to perceive police and judicial discrimination than either Chinese or white respondents” (p. 446-7). Canadian blacks “are more likely than their white and Chinese counterparts to report that discrimination is both severe and commonplace” (p.448). The American data are similar: controlling for education, income, age, gender, region of the country, and political orientation, “Blacks are significantly more likely than whites to view themselves as being the brunt of harsh treatment at the hands of the criminal justice system.... and to believe that racism among police officers is very or fairly common” (p. 500).

*Education* does make a difference. In the US, the more educated a respondent is, the more likely it is that there will be negative appraisals of the criminal justice system’s treatment of blacks generally. Similarly, in Canada, those who were best educated were most likely to perceive the criminal justice system as being unjust.

*The most dramatic finding for Canada,* however, was that contact with the police or the courts was likely to *increase* perceptions of criminal *injustice*, particularly for blacks. This may not be too surprising given that blacks were much more likely to report that they had been stopped by the police (43% of males reported being stopped at least once in the past two years) than were whites (25%) or Chinese (19%). Hence the problem is not that blacks hold an uninformed stereotype of the police and courts based on no direct experience. When they actually have contact with the criminal justice system, their views become even more negative.

*Conclusion.* These findings -- that blacks are much more likely than whites to perceive racial bias on the part of the police and courts -- are important for a number of reasons including the fact that “people obey the law [in part] because they believe that it is proper to do so... People are more responsive to normative judgements and appeals than is typically recognized by criminal legal authorities...” (p. 461). Given that most people believe that it is the responsibility of the police and others in the criminal justice system to maintain confidence in the system, these perceptions of injustice cannot be ignored. They are also important because they are one more indicator of differential treatment of blacks by the police and other parts of the justice system.

*References.* Wortley, Scot. Justice for all? Race and perceptions of bias in the Ontario criminal justice system -- a Toronto study. *Canadian Journal of Criminology*, 1996, 439-467. Weitzer, Ronald and Steven A. Tuch. Race, class, and perceptions of discrimination by police. *Crime and Delinquency*, 1999, 45, 494-507.



**Victims want to be recognized as participants in the criminal justice process. Police can improve victim satisfaction and support for themselves by keeping victims apprised of developments in “their” case.**

*Background.* In the Netherlands, as in many other countries, crime is seen as a key social problem. As in many other countries, most members of the public in that country think that sentences are too lenient. Policy responses are predictable: “get tough” practices have been implemented. “Both the number and the length of custodial sentences have increased dramatically in recent years” (p. 168). Inmate populations have increased dramatically.

The major concern of victims, however, is “a lack of interest by police and their failure to inform the victim of the developments in their case” (p. 169).

*This study* reports on interviews with 640 victims of property crimes or minor assaults. Although most victims (80%) wanted to be kept informed about their cases, only 33% of those who wanted the information actually obtained it.

*The results* of the study are simple: Those who were kept informed about the progress of their case were more satisfied with the performance of the police, showed more support for the police, and indicated that they were more in agreement with sentencing practices of judges. This last finding “may be a result of the improved satisfaction and support for the authorities. However, it may also be the result of the fact that notification provides victims with accurate information about sentencing” (p.176). As the authors point out, “notification has advantages for criminal justice authorities and policy-makers. It provides authorities with a simple means to enhance victim satisfaction and support without changing the [structure of the] existing criminal justice system” (p. 176).

*Conclusion.* One humane way of treating victims that also enhances victims’ assessment of the criminal justice process is to keep victims informed about what is happening with their cases. When this is done by the police, the victims not only see the police in a more favourable light, but also see various aspects of the criminal justice system -- particularly sentencing – more positively.

*Reference.* Wemmers, Jo-Anne M. Victim notification and public support for the criminal justice system. *International Review of Victimology*, 1999, 6, 167-178.

**Street gangs are not a new phenomenon in Canadian cities. A typology of gangs which divides them into three groups -- criminal organizations, street gangs, and wanna-be groups -- is important because the motivation to be involved in each of these three types of organizations is different. The most appropriate interventions vary with the type of group.**

*Background.* "Gangs" have been seen, at least in Vancouver, as a significant social problem for over 50 years. It appears, at least in British Columbia, that many of the members of groups identified as gangs drifted into "membership" just as young people "drift" into membership in other groups (e.g., the Boy Scouts). "The availability of choices is a key to understanding a person's involvement in gangs. If an individual has no access to, or is not encouraged to join, a mainstream group, an "illegitimate" group may be chosen instead" (p. 43). The "phenomenon [of the gang should be] viewed along a continuum ranging from groups of friends who spend time together and who occasionally get into trouble, to more serious, organized criminal groups or gangs" (p.44).

*This study* examined all of those people (in custody or on probation in the Vancouver area) identified by correctional personnel as being (or having been) involved in gangs. The problem, however, is that "small groups of offenders were being referred to as "gangs" when the members of these groups did not see themselves that way" (p. 47). Indeed, the "names" of gangs were sometimes imposed on a group of offenders by the news media even when the members did not consider themselves a gang, but rather saw themselves as a group of friends who sometimes offended. Excluding these cases, there were also some "real" gangs. The most organized ones might be described as being "criminal business organizations" which consist largely of adults who "engage in criminal activity primarily for economic reasons and almost invariably maintain a low profile" (p.48). "Street gangs," on the other hand, consist mainly of young adults and perceive themselves as a gang and acknowledge membership. "Wanna-be groups" are loosely structured groups who engage in impulsive criminal activity (including violence) and want to be seen as a gang.

The question, "Why do individuals become involved in gangs?" is not useful because the answer differs with the nature of the group. Membership of criminal business organizations "is ethnically shaped and meets the economic and social needs of both organization members and their families" (p.50). The individual motivation is primarily economic. "Street gang" membership appeared to be more likely "a result of peer group attraction" (p.51). Many "wanted to escape from, and find rewarding alternatives to, exceedingly unpleasant family lives" (p.51). "Wanna-be" group members were younger than members of the other types of groups. They were involved in less serious types of crimes, but came from disadvantaged circumstances, and had high rates of educational as well as other social or behavioural problems. "The group satisfied a variety of unmet emotional needs, especially the need for attachment -- for a sense of belonging" (p.54).

*Conclusion.* Membership in the various types of "gangs" appeared to be driven by different factors. As a result, interventions attempting to reduce gang activities, then, should focus on the particular needs of potential gang members. "Anti-gang programming appears to be most effective when it is aimed at the supply of new gang and group members, rather than existing and well-established street gang members." As in other areas, a focus on prevention is likely to be the most effective approach.

*Reference.* Gordon, Robert M. Criminal business organizations, street gangs, and "wanna-be" groups: A Vancouver perspective. *Canadian Journal of Criminology*, January 2000, 39-60.

**Low birth weight, combined with low socioeconomic status, places children at risk for early onset (life-course-persistent) offending.**

*Background.* Youth who begin offending early are more likely to persist in their offending behaviour after adolescence. Therefore, it is important to understand what causes early onset offending. A distinction has been made between “life-course persistent” and “adolescent limited” antisocial behaviour. “The cause of antisocial behaviour for the life-course persists, according to [psychologist] Terrie Moffitt, is a result of the interaction between neuropsychological impairments and poor social environments. This “double hazard” of perinatal risk and social disadvantage increases the risk for deviant behavioral outcomes...” (p. 845). Previous research has shown that “poor neuropsychological scores were associated with early onset of delinquency for males...” (p. 846). But what is important in this theory is that it is the “*interaction* between a child’s vulnerabilities to neuropsychological disorders and poor social environments that produces early onset, and not necessarily the independent influence of these determinants” (p. 847). In other words, a child has to experience both, not just one, for an “early onset” of “life-course persistent” problem behaviour to emerge.

*This study* looked at 987 youths from a longitudinal sample of black mothers who participated in a research project conducted in Philadelphia. From these, a subset of 220 youths who had at least one recorded offence by age 18 were examined carefully. This sub-sample was then divided into early onset (prior to age 14) and adolescent-onset youths. Two measures of disadvantaged environment were used: weak familial structure and poor socioeconomic status.

*Results.* For females, the various “risk” factors and their interaction *did not* predict early onset. For males, however, the combination of low birth weight and residence in a weak family structure (e.g., a large number of changes in the mother’s marital status, absence of husband/father) was likely to lead to early onset delinquency. Moreover, boys from low socioeconomic situations who were low birthweight were much more likely to be early onset delinquent youth than were those of relatively high birthweight. For high SES boys, there was no impact of birthweight.

*Conclusion.* For boys, it would appear that being disadvantaged at birth *and* during childhood combine to create a risk of early onset, life-course persistent anti-social behaviour. Hence, the adverse impact of low birth weight could be reduced or eliminated through social means: “Supportive environments and early interventions stand a fighting chance at diminishing the consequences of birth-related difficulties, and such approaches may have an even more demonstrable impact on inner-city youths” (p.869).

*Reference:* Tibbetts, Stephen G. and Alex R. Piquero. The influence of gender, low birth weight, and disadvantaged environment in predicting early onset of offending: A test of Moffitt’s interactional hypothesis. *Criminology*, 1999, 37 (4), 843-877.

**Being abused or neglected in childhood increases both the likelihood that a child will run away from home and the likelihood that a child will become delinquent. However, running away (even for a child who is from a non-abusive home and who is not neglected) independently increases the likelihood of being involved in delinquency.**

*Background.* Running away from home clearly puts a child at risk of, among other things, being involved in delinquent behaviour. Aside from anything else, running away “introduces youth to the need and opportunities for delinquent behaviours” (p.349).

*This study* started with a group of 11-year old children who were found by a court to have been abused or neglected. The researchers matched them (on age, gender, race, social class) with a control group of youth who had not been neglected or abused. They were then located when they were in their late 20s and interviewed.

*The data show* unambiguously that abused/neglected children were much more likely to have run away during adolescence. In addition, children who had run away were much more likely to have had at least one juvenile arrest. “Being abused or neglected remains a significant predictor of juvenile arrest, even when controlling for demographic and family factors and running away” (p. 361). Running away, on the other hand, “increases the risk for arrest for both abused and neglected and control children” (p. 365).

*Conclusion.* Since being abused or neglected and running away appear to each have an independent impact on future delinquency (and being abused/neglected also increases the likelihood of running away), it would appear that, in terms of preventing delinquency, one could focus on either or both of these problems. A focus on reducing abuse and neglect is obviously important for three reasons: it may help reduce the incidence of that problem, it may reduce running away, and it can reduce delinquency. However, these data also suggest that we need to focus attention on what it is “about the runaway experience that increases a youth’s risk for juvenile arrest...” (p. 367). “Running away may represent a critical point for intervention, particularly if we view the runaway behaviour as a marker for subsequent high risk outcomes... Runaway behaviour may provide us with an important opportunity to intervene positively in the lives of these youth, particularly for very young runaways and for abused and neglected children who may have the highest risk of involvement with the juvenile justice system” (p. 368). One suspects, however, that Ontario’s “Safe Streets” Act, which, in effect, criminalizes the behaviour of runaways, would not qualify as a positive intervention.

*Reference.* Kaufman, Jeanne G. and Cathy Spatz Widom. Childhood victimization, running away, and delinquency. *Journal of Research in Crime and Delinquency*, 1999, 36(4), 347-370.

**Everyday knowledge -- and everyday misunderstandings of the law -- can affect the way in which decisions are made. Jurors in capital cases in the state of Georgia often have strong, and largely incorrect, views of the likelihood of release of an offender given “life” instead of the death penalty. The legal fiction that the consequences of a decision are not relevant to the jury members is clearly not followed: Death is recommended by juries in part because they do not know what the meaning is of a sentence of life in prison.**

*Background.* Folk knowledge – everyday, taken-for-granted understandings of the world – shapes the way in which people make decisions and can shape the way in which governments respond to people. “Recent public opinion research reveals increasingly punitive attitudes in the United States. Since the claim that punishment is too lenient is embedded in cultural understandings rather than experience with crime [or the criminal justice system], the implication that we are not now imposing enough punishment is a cultural tenet, a value judgement, not subject to empirical refutation” (p. 465).

*This study* examines citizens’ views of the release of offenders who have been convicted of murder. The public generally believes that dangerous offenders are released soon after their conviction and return to their communities to commit additional crimes. Public opinion polls in the U.S. show that large numbers of people believe that convicted murderers will be released from prison considerably earlier than they actually are under the law. “Citizens clearly do not trust the criminal justice system to act predictably in accord with legal requirements, to the extent that they actually know what state law requires” (p.473). Most people believe that murderers are released too early.

*Jurors* in capital cases, in the state of Georgia, for example, appear to believe that murderers are released after 7 years when, in fact, some of them are only first *considered* for parole (typically at 15 years. Furthermore, capital murderers not given the death penalty have not been eligible for parole since 1994. The problem is that jurors deciding on whether an offender should be executed want to know what the consequences of a decision *not to* execute would mean. Judges are not able to tell them since the law appears to imply that such “consequences” are irrelevant.

*Conclusion.* When people are making decisions, the consequences of those decisions are taken into account. When those consequences are misperceived, it is the misperception that will affect the decision. Courts have repeatedly been reluctant to allow “ordinary jurors” to take into account the consequences of their decisions. Thus, for example, when deciding between two possible charges, decision makers may well take into account expectations based on “folk wisdom” rather than facts when crafting a decision that is designed to accomplish a particular goal.

*Reference:* Steiner, Benjamin D., William J. Powers, and Austin Sarat. Folk knowledge as legal action: Death penalty judgements and the tenet of early release in a culture of mistrust and punitiveness. *Law and Society Review*, 1999, 33, 461-505.